

1 noticed three others, and they're all people that we have
2 allegations with respect to. So Mr. Davis has indicated
3 that some of these people may not know very much. If that's
4 true, we'll have short depositions. I can pledge I'm not
5 going to sit there and be the sort of lawyer that makes
6 everybody wonder when in the world is he going to ask a
7 relevant question. I'm going to find out what I want to
8 find out, and move on.

9 So I'm not trying to make excuses, but every one
10 of the 10 people, 7 of them they have affidavits from, 3 of
11 them we have applications for. I've responded to one in
12 particular, which is the -- I believe his title is Vice
13 Chairman, Mr. Lustgarten. There's an allegation in the
14 answer that Mr. Lustgarten made, the sort of smoking gun, if
15 you will, admission -- words to the effect that "if we don't
16 own you," meaning my client, "then we have incentive to
17 carry you."

18 Mr. Davis' response, his objection to Mr.
19 Lustgarten's deposition, says that's not true. That's what
20 depositions are for. Again, regarding Mr. Lustgarten's own
21 involvement, he claims that he just got bought into this
22 somehow, or says it never happened and that I'm being lied
23 to, then maybe so. But I'd like to put him under oath and
24 find that out.

25 MR. DAVIS: Mr. Lustgarten is an excellent example

1 here, Your Honor, of what's wrong with just noticing 10
2 depositions of the highest officers of the company. They
3 have in their complaint the allegation, a mystery person.
4 We don't the name of the -- an unidentified person who told
5 somebody at Classic Sports that the unidentified third
6 person had had a conversation with Mr. Lustgarten, where Mr.
7 Lustgarten said something that I think can be interpreted
8 fairly innocuously.

9 But we're now three steps removed, an allegation
10 by someone who -- we don't even know the name. And they
11 say, "Based on that we want to take the deposition of one of
12 your highest officers." You know, if that were the law,
13 then you know -- if you're suing General Motors for your
14 pick-up truck blowing up, every single Plaintiff's lawyer in
15 the world says, "Everyone in the company knew this, and the
16 CEO on down covered it up. We want to depose the CEO of
17 Ford, Chrysler and GM."

18 Every single case that's the allegation, and so
19 the courts have dealt with this for years. And what the
20 courts say, particularly recently in the District of
21 Columbia, is that these depositions are an incredible amount
22 of time and expense, incredible burden on everybody
23 involved. Let's get to the key people. Let's do the key
24 three people, let's see what they have to say. Do those,
25 and then evaluate.

1 If you need more after that, you can explain to
2 the Court why you need more, come in and explain -- or you
3 don't even have to come to the Court if you can agree among
4 yourselves. But in the first instance, let's not open the
5 floodgates and to depose everyone because an unidentified
6 third person's hearsay made an allegation.

7 MR. HORTON: Your Honor, I have to profess to be
8 mystified here. They know well who we're talking about.

9 MR. DAVIS: Who? I don't know.

10 MR. HORTON: There was an intermediary, an
11 investment banker -- perhaps you don't know, but the client
12 knows who we're talking about. He's an investment banker
13 who has friends on both sides. He says, "Let me see if I
14 can be of help," at one point in the negotiations. This is
15 a person of substance.

16 He came back to us and told us this. And we
17 submitted an affidavit from Mr. Greenberg, one of our
18 principles, that says, "I was told this." This is not, you
19 know, some kind of a little bird that whispered it in his
20 ear. We've got a real basis for doing this now. Again, if
21 Mr. Lustgarten's involvement turns out to be nothing more
22 than he was willing to give this gentleman an audience, and
23 denies that he ever said such a thing, we'll have a short
24 deposition.

25 But this is not give me a list of their officers

1 and I'll notice all their depositions. I've got contact
2 with them, either by my people, or in this case through a
3 man of substance and reputation, who came back and said he
4 said something which is an awfully hot statement, from my
5 standpoint. And I ought to be allowed to inquire into it.
6 This is just normal discovery.

7 MR. DAVIS: There's an easy answer, Your Honor.
8 Why don't they notice the deposition of the mystery
9 investment banker, let's see what he says. If the mystery
10 investment banker then says all the things they're saying,
11 we can re-evaluate at that time. I don't know who it is, I
12 have no idea what this person's going to say under oath.
13 They haven't submitted any declarations or affidavits. And
14 this is quite a stretch.

15 If they think this person really said that, why
16 don't they notice his deposition and not Mr. Lustgarten?

17 JUDGE CHACHKIN: Well, I think Number 10 doesn't
18 sound to me unreasonable. And considering the nature of the
19 inquiry, as Mr. Horton pointed out, Mr. Lustgarten will be
20 asked a few questions. If he denies it all, that will be
21 the end of it. I don't think we're dealing here with three
22 days or a week of depositions. In fact, the time
23 limitations I imposed to ensure that these depositions are
24 going to have to be over in a reasonable period of time.

25 I mean, it will be inconvenient for Mr. Lustgarten

1 to have to go down to Arnold and Porter's offices in New
2 York City, but if he's there for a half hour, an hour, I
3 don't think that's going to be a big deal. And if counsel
4 in good faith tells me that this is an important point to go
5 into in support of his allegations, then I'm not going to
6 say he shouldn't take Mr. Lustgarten's deposition.

7 MR. DAVIS: If they're talking one or two areas,
8 as they've said here on the record, they can ask a
9 deposition on written questions and ask to be answered under
10 oath. And they'll get the answers they want. But to have
11 drag him down to Washington, or even to --

12 JUDGE CHACHKIN: No, no. We're talking about New
13 York City. These depositions are going to be taken in New
14 York City.

15 MR. HORTON: I noticed the depositions in my New
16 York office on the assumption that that would greatly
17 decrease any --

18 JUDGE CHACHKIN: It may be walking distance. I
19 don't know where the office is.

20 MR. DAVIS: They're on Long Island. But in any
21 event, Your Honor, the important point is that they can ask
22 an interrogatory, they can ask written questions. And they
23 want to depose him. They're saying now it's going to be a
24 half hour. You wait until we're in the room. And I have no
25 way to -- they'll go into millions of areas.

1 JUDGE CHACHKIN: I'm willing to give them the
2 leeway. They have a right to make their case. If you feel
3 it's onerous, unreasonable, I'm there on the phone. Call me
4 up if you feel the inquiry's gone beyond what's reasonable,
5 and I'll make my ruling whether it should continue, or the
6 nature of questions being asked. I'm not -- I don't know
7 how it is in federal court, but here I'm available to make a
8 ruling any time questions come up about relevancy or
9 anything else.

10 MR. HORTON: That's fine, Your Honor. We'll try
11 not to bother you, but perhaps we will. Just so I can be
12 clear, I will ask Mr. Lustgarten about this particular
13 event. I would also plan to ask him in general, "Did you
14 have any other involvement with Cablevision? Did you talk
15 to the other principles at Cablevision or Classic Sports?"
16 And if he says, "Oh, sure. I got the whole story from Mr.
17 Dolan," I'm going to ask him what did Mr. Dolan say.

18 JUDGE CHACHKIN: Well, that's --

19 MR. HORTON: And he says, "No, I had no
20 involvement," then I won't go any further.

21 JUDGE CHACHKIN: I think that's certainly
22 reasonable. We're not going to go all over the place, it's
23 going to deal strictly with these issues. And it's
24 unfortunate, maybe inconvenient, but I'm going to require
25 Mr. Lustgarten's deposition to be taken.

1 MR. DAVIS: That's fine, Your Honor. I see I lost
2 on Mr. Lustgarten. I want to be clear that I hope there's
3 not a ruling here that they're entitled to take all of the
4 10 depositions they've noticed, though. Because there are
5 persons even more egregious than Mr. Lustgarten they've
6 noticed.

7 JUDGE CHACHKIN: Well, you tell me who else you
8 feel that doesn't have relevant evidence, and I'll --

9 MR. DAVIS: They have down the chairman, the
10 highest ranking person of our company, Charles Dolan, who's
11 had not involvement in this.

12 JUDGE CHACHKIN: Well, let me ask you, what's the
13 basis of taking Mr. Dolan's testimony?

14 MR. HORTON: I think it's going to end up like Mr.
15 Lustgarten's deposition. I suspect it will be short. We
16 have an allegation in our complaint that Mr. Greenberg on my
17 side had a conversation with Mr. Dolan about this, and I
18 want to inquire as to that. And more generally, I will ask
19 the same sort of general questions I just mentioned with Mr.
20 Lustgarten, to test their denial that he had anything to do
21 with this.

22 We think it's unlikely, but he says, "Look, this
23 is just beyond me. I don't know Classic Sports from a hole
24 in the wall. I got a call from this guy Greenberg, and I
25 said to talk to someone else, and that's all I know." And I

1 might spend five minutes seeing if I can refresh his
2 recollection, and if I don't, that will be the end of the
3 matter. We'll have a short deposition.

4 If I didn't have an allegation -- again, Your
5 Honor, I will tell you that I did not go down the list of
6 their officers saying, "Who are the ones with fancy-sounding
7 titles," that if I noticed their depositions, it will put
8 pressure on them to cave rather than produce their people
9 for depositions.

10 MR. DAVIS: Your Honor, I've never been in a case
11 in 12 years where people have asked for this high-ranking
12 officers and directors without any evidence that they were
13 involved in the case. Never. To then come in and say,
14 "Well, it will be a short deposition. I'll just ask then,"
15 I've never heard of this.

16 JUDGE CHACHKIN: Well, apparently there's an
17 allegation here that Mr. Greenberg did have a conversation
18 with Mr. Dolan of substantive import.

19 MR. DAVIS: Well, I'll disagree on that. The
20 allegation is that Mr. Greenberg called Mr. Dolan, and Mr.
21 Dolan says go talk to somebody else. End of call. Based on
22 that, they say that's the basis for them deposing Mr. Dolan?

23 JUDGE CHACHKIN: Wait a minute. Is that the
24 basis, or do you have something of more substance?

25 MR. HORTON: That's basically it. There's less on

1 Mr. Dolan than there is on Mr. Lustgarten.

2 JUDGE CHACHKIN: Well, for instance --

3 MR. HORTON: We've also copied on some
4 correspondence, as well. He is the man that runs the
5 company.

6 JUDGE CHACHKIN: Well, he ran the company.
7 Apparently he's now removed himself, didn't he? His son
8 took over or something?

9 MR. HORTON: There are press reports that his son
10 -- and frankly, Your Honor, that is one of the other reasons
11 why we are interested. There are -- we asked about Mr.
12 Dolan's involvement in interrogatories -- I'm sorry, Mr.
13 Dolan, Senior, Charles Dolan, and Junior, James Dolan.
14 There doesn't seem to be any question but that Mr. Dolan,
15 Junior, had some involvement. Again, I think they're going
16 to say it's less than some others further down the chain,
17 but their interrogatory responses do state that he was
18 involved in several of the meetings involved in this.

19 The father/son connection, frankly, makes me want
20 to know what's going on here. If the answer is nothing,
21 then Mr. Dolan, Senior, will not be subject to much
22 inconvenience. If you want to ask me do I have someone
23 attributing a smoking gun statement to Mr. Dolan, Senior as
24 I do Mr. Lustgarten, no, I don't.

25 MR. DAVIS: Your Honor, the allegations are -- and

1 let's make sure, because I think we agree what the
2 allegations are, and I want to make sure you understand.
3 The allegations are Mr. Greenberg called Mr. Dolan, Charles
4 Dolan. Charles Dolan said to talk to somebody else. Then a
5 letter went out from, I believe, their stationery that cc'ed
6 Mr. Dolan. That's it.

7 I mean, how can their call to him that had no
8 substance, and their letter to somebody else, cc'ed to Mr.
9 Dolan, make him available for deposition? They're
10 manufacturing their own depositions by placing a call with
11 no substance.

12 JUDGE CHACHKIN: Well, let me say as far as Mr.
13 Dolan, Senior, is concerned. Are you ready to stipulate
14 that this conversation took place in which he said -- he
15 referred them to somebody else?

16 MR. DAVIS: He doesn't remember it, but it's so
17 innocuous, I'm happy to stipulate to it, because it's
18 irrelevant. But he doesn't remember it. So I can't
19 stipulate that it happened, because he doesn't remember it.

20 JUDGE CHACHKIN: But you're not going to contest
21 it?

22 MR. DAVIS: No, no.

23 JUDGE CHACHKIN: If Mr. Greenberg gets up and
24 says, "this is what happened."

25 MR. DAVIS: If he says he called him, and that Mr.

1 Dolan referred him to somebody else, fine. There's no issue
2 there.

3 JUDGE CHACHKIN: Well --

4 MR. HORTON: Well, are we also clear enough, Your
5 Honor, that Mr. Dolan, Senior, had no further involvement,
6 didn't discuss my client or this deal with his son, Mr.
7 Lustgarten, Mr. Low, the director of programming? You know,
8 if he's the guy that's pulling the strings behind --

9 MR. DAVIS: Well, if he's pulling the strings
10 behind, they're more than able to find that out in their
11 deposition to these other persons. I mean, nobody's hiding
12 anything.

13 JUDGE CHACHKIN: Well, let me say this. As far as
14 Charles Dolan is concerned, he will be the last witness. If
15 it develops in your depositions, if James Dolan, any of
16 these other individuals, that Charles Dolan had more of a
17 role than just this phone call and receiving a copy of the
18 letter, then I will permit you to take his deposition.

19 MR. HORTON: That's fine, Your Honor.

20 JUDGE CHACHKIN: And I will leave it to see what
21 develops. If nothing develops, and it ends with these other
22 individuals, then there seems to me no purpose of taking his
23 deposition.

24 MR. HORTON: That will be fine. I'm agreeable to
25 that.

1 JUDGE CHACHKIN: So he will only be -- he's been
2 noticed for deposition, but if, as I say, it develops that
3 he did play a more substantive role than what appears, then
4 I'll permit his deposition to be taken. If it turns out
5 that he didn't, then obviously his -- there will be no need
6 for his deposition.

7 MR. DAVIS: I hear Your Honor. I mean, some of
8 these other people have the same point. Mr. Shuken was
9 present at the meetings, there's no allegation that he did
10 anything. They presumably just want to depose him and say
11 what happened at the meeting.

12 MR. HORTON: He's a witness. If that's not a
13 classic reason for taking his deposition, I don't know what
14 is.

15 MR. DAVIS: Why can't they depose the other people
16 at the meeting and see whether anybody even disagrees?

17 JUDGE CHACHKIN: Well, if he was present at a
18 meeting where something happened, then I will require his
19 deposition to be taken. To know exactly what his views of
20 the meeting -- if they're similar to what their principals
21 are going to allege took place at this meeting. Later on,
22 he can't come on as a rebuttal witness and say, "This didn't
23 occur." They should have a right in advance to know what
24 his version of what took place at the meeting was. So I'm
25 going to permit his to be taken.

1 MR. DAVIS: Well, Your Honor, given the number of
2 depositions that are being allowed in the first instance, is
3 there some limit at all to the number of depositions?

4 JUDGE CHACHKIN: Well, nine or 10 is not
5 excessive, as far as I'm concerned. It would be, as I say,
6 if this was an antitrust case, and there's going to be weeks
7 and weeks of each person being deposed. But the areas of
8 inquiry are very limited here. I would imagine all these
9 depositions could certainly be concluded in less than a
10 week. Probably less than that.

11 MR. HORTON: Your Honor, my hope is that unless we
12 get into -- they become root canal painful depositions, that
13 these are all going to be conducted in a day. Unless, you
14 know, as we find out -- again, I'm not sure who on their
15 side is going to -- you know, is going to be the fountain of
16 knowledge. Maybe I'll find someone who's going to have so
17 much to say that we'll have to carry him over to another
18 day. But that's what I had in mind.

19 MR. DAVIS: A day each for nine? Nine days total?
20 Or a day for all of them?

21 MR. HORTON: No, they're each scheduled for a
22 different day.

23 MR. DAVIS: And you're going to need eight hours
24 for each one?

25 MR. HORTON: I'm assuming that each one of them

1 will be done that day, and I assume that their times will
2 vary.

3 MR. DAVIS: Your Honor, that's 72 hours.

4 JUDGE CHACHKIN: Well, that's -- it's not
5 necessarily 72 hours. It may be over in an hour or two.
6 Now, if you want someone to wait around that day, and if
7 they don't get to him, then we can schedule two for a day,
8 or three for a day. But this is for the convenience of your
9 people. It may be over in an hour or two, and that will be
10 the end of it.

11 Like I say in a case, if they ask some questions
12 and he says he doesn't know anything, that will be end of
13 it.

14 MR. DAVIS: Okay.

15 JUDGE CHACHKIN: But there's no way of knowing, so
16 in order to -- so it won't inconvenience your principals --
17 but if you want him to schedule two or three a day, and your
18 people have to be ready to go, fine. Maybe it could be an
19 arrangement that your people will be at call if they finish
20 with one witness, so you can go on to the next witness
21 without waiting, starting the next day. Particularly if
22 it's very brief.

23 MR. HORTON: Well, my concern has been the
24 opposite, which is that if we schedule everyone for a day,
25 then that person knows they have to come on that day, and we

1 don't then have someone who would prefer to be in his office
2 on Long Island sitting in a conference room in my New York
3 City office with down time, trying to conduct his business
4 by telephone.

5 JUDGE CHACHKIN: But it would seem to me, knowing
6 what you know about some of these witnesses, you could tell
7 in advance whether some of these are going to take all day,
8 or someone's going to be done in two or three hours. So
9 they'd be scheduled two a day.

10 MR. HORTON: I'm happy to give it a shot, Your
11 Honor. As long as I don't find that one of the ones that I
12 thought would be two hours and turns out has a lot to say,
13 and that therefore if that person is the morning, I don't
14 want to have to stop him and say, "Well, look. I've got to
15 get to the next person at two o'clock." So I've not limited
16 myself to three hours for someone that I thought would be
17 short, but turns out to know --

18 JUDGE CHACHKIN: No, no. We'll make it an
19 arrangement -- the arrangement will be that your man will be
20 in Long Island, waiting to be called. And that counsel will
21 know after some questions whether or not he's going to
22 conclude by noon and take on your witness at two o'clock, to
23 get him time to get there. So we could take two a day. And
24 it may be a case where it's really short, and be able to
25 take somebody three a day.

1 MR. HORTON: I'm personally happy to --

2 JUDGE CHACHKIN: So we can get it over in a few
3 days.

4 MR. DAVIS: I understand Your Honor's rulings on
5 the number of people, so I've moved on. I'm not even
6 arguing about that any more, I lost that one. The one thing
7 we are a little way of is the range of questions and taking
8 advantage of these people's time. And so we'll be in the
9 room, we'll watch that closely. I hope we don't need to
10 call you during any of these depositions, but if we start
11 getting far afield and wide-ranging beyond Classic Sports --
12 that is, if we stick to Classic Sports, these will, as Mr.
13 Horton says, be short, very, very short depositions.

14 JUDGE CHACHKIN: Well, I am sure Mr. Horton will
15 act in good faith.

16 MR. DAVIS: Oh, I'm sure he will. But sometimes
17 good faith --

18 MS. KLEIN: Your Honor.

19 JUDGE CHACHKIN: I'm here to rule on --

20 MS. KLEIN: Your Honor, there will also be an FCC
21 representative there.

22 JUDGE CHACHKIN: And you'll be there also, right.
23 You'll have questions to ask, too, that's right. You have a
24 right to ask questions to. But would you prefer that you
25 get a list of the order of the deponents so that you could

1 have at least one deponent ready if he could be reached that
2 day? It's strictly up to you.

3 MR. DAVIS: I'm going to talk to the witnesses,
4 because as you'd understand, it's very hard for their
5 scheduling. I'll ask them their preference.

6 JUDGE CHACHKIN: All right.

7 MR. DAVIS: If they prefer to do it that way,
8 that's the way we'll do it. If the witness wants to do it
9 that way.

10 MR. HORTON: And Your Honor, our position on this
11 is we set dates because the rules required the setting of
12 dates. We're more than happy to -- as far as I'm concerned
13 those dates don't mean a heck of a lot, except to the extent
14 that I have scheduling problems, and Ms. Klein has
15 scheduling problems. We have to work around everyone's
16 schedule.

17 JUDGE CHACHKIN: Well, I'm sure you could work
18 something out.

19 MR. HORTON: I have every intention of trying to
20 work those things out.

21 JUDGE CHACHKIN: I'm sure that could be dealt
22 with. All right. So I'm going to permit all these
23 depositions to be taken, except in the case of Charles
24 Dolan. He will be the last and only if it proves necessary,
25 based on the depositions of the other witnesses. All right.

1 The other matter is the motion for protective order, and I
2 guess that gets -- that's a little complicated.

3 What we're dealing with here is two provisions,
4 apparently. Let's take the easy one first, the expert
5 witnesses. Do you intend to put on any expert witnesses?
6 Is that your intent?

7 MR. HORTON: At the moment, I don't know. I don't
8 think that I will, but I might, and it's going to depend on
9 some of what I hear from them. My concern is quite simple,
10 obviously. And Mr. Davis has some case law for cases in
11 which these sorts of restrictions have placed. I think they
12 generally fall highly secret, you know, secrets of software,
13 the formula for Coca-Cola, that sort of thing. In my years
14 of litigating, I've never had one of these.

15 I've heard of them, but I think they're quite
16 uncommon. I'm concerned with two things. One is I don't
17 like the idea of giving the other side a virtual veto over
18 my -- what expert I might use. I'm concerned about the
19 extra time constraints, given the schedule that we're on. I
20 asked Mr. Davis if there's some concern he has -- because I
21 have had this issue come up before, where I've been
22 litigating against someone saying, "Listen. You're not
23 going to use the John Jones consulting firm, because we've
24 got a real problem with that."

25 And I say if you've got someone in mind that

1 you're concerned about, let me know, I'll check with my
2 client and see if they've -- whatever it is I might need,
3 I'm sure I can work around. It just seems to me that this
4 is for the unusual situation, and I don't see why this is
5 the unusual situation here.

6 JUDGE CHACHKIN: Well, one other thing, Mr. Davis.
7 In your response, you indicated -- you cited some cases in
8 which expert witnesses would not be permitted. Now, doesn't
9 the definition given by Mr. Horton, doesn't that actually
10 cover all those areas?

11 MR. DAVIS: No, Your Honor. It just says they're
12 not -- I'll have to get it in front of me.

13 JUDGE CHACHKIN: It says not an employee, not an
14 agent, not some business.

15 MR. DAVIS: No, no. But if you look at the cases
16 -- and this is not, by the way -- I was remiss in also not
17 noting these sorts of protective orders have been entered by
18 the Commission. I mean, as recently as the Bell
19 Atlantic/NYNEX merger, in that context. You had a
20 protective order of this sort entered. So I inadvertently
21 didn't include that in my citations to court cases, but
22 there's nothing bizarre or unusual about these protective
23 orders. They're very traditional, and on an ordinary basis
24 when you're dealing with confidential and trade secrets.

25 Getting to the experts, their definition does not

1 preclude this specific problem.

2 JUDGE CHACHKIN: I think it does. Let's see what
3 their definition of it --

4 MR. DAVIS: Let me find the number. If you go to
5 -- if you look at their exhibit, I don't know which exhibit
6 we're looking at.

7 JUDGE CHACHKIN: We're looking at the motion for
8 protective order.

9 MR. DAVIS: Yes. And then they have three --

10 JUDGE CHACHKIN: Stipulations.

11 MR. DAVIS: The three exhibits at the end, right?

12 JUDGE CHACHKIN: No, look at 3-D.

13 MR. DAVIS: 3-D.

14 JUDGE CHACHKIN: "Any bona fide outside expert
15 (which shall not include any employee, customer, supplier or
16 competitor of any party)."

17 MR. DAVIS: Let me tell you the exact situation
18 I've seen. You have an outside consultant, not an employee
19 --

20 JUDGE CHACHKIN: Well, it says "consultant" here.

21 MR. DAVIS: Yes. Wait a minute. You have an
22 outside consultant that's used on an ongoing basis by
23 Classic Sports, or has been used in the past or maybe used
24 in the future. That person is advising Classic Sports on
25 what type of programming they should do, what prices they

1 should charge, et cetera, et cetera. They want to give that
2 person access to the trade secrets of Classic Sports'
3 competitor. I have no confidence whatsoever that that
4 person when this case is over, won't use that information to
5 my detriment in his ongoing business work and consulting
6 work for Classic Sports.

7 So that's why it's absolutely critical, and that's
8 why the protective order that we've submitted provides for
9 it. That it be a truly independent expert. All this says
10 in theirs at 3-D is that it's not an employee.

11 JUDGE CHACHKIN: Well, it goes beyond that.
12 Customer, supplier or competitor.

13 MR. DAVIS: It doesn't include consultants.

14 JUDGE CHACHKIN: Do you want to enlarge the
15 definition? Perhaps we could solve this problem by
16 enlarging what -- who else do you want to include in this
17 definition?

18 MR. DAVIS: Doesn't solve it. Because I can't
19 right now figure out every conceivable person that they
20 might want to give material to. They're asking me now, up
21 front, to give them a list of persons they can't give the
22 information to.

23 JUDGE CHACHKIN: No, I'm not talking about
24 persons, type of person that you would object to.

25 MR. DAVIS: We've laid that out in our motion,

1 which are people that are not independent outside experts.
2 That would have a risk of disclosing the information to
3 Classic Sports, or to another competitor of Cablevision.
4 That's the type of person, and when they show me the name, I
5 can tell them yes or no if that person qualifies.

6 JUDGE CHACHKIN: Well, maybe the simplest thing is
7 this. First of all, we don't even know whether you're going
8 to use an expert.

9 MR. HORTON: That's correct, Your Honor.

10 JUDGE CHACHKIN: So all this may be for nothing.
11 I'm debating here. But if you decide to use an expert, and
12 if you provide them some information about who this expert
13 is, and they object to the expert, that particular expert,
14 then you can come to me and I'll make a ruling, phone call.
15 Make a ruling whether or not that's a -- that's justified or
16 not.

17 MR. DAVIS: That's all we're asking for, Your
18 Honor.

19 MR. HORTON: If we can at least agree that this
20 would be done on an expedited basis.

21 JUDGE CHACHKIN: Yes.

22 MR. HORTON: I'll tell Mr. Davis, and he'll let me
23 know by the next day if he's got an objection.

24 MR. DAVIS: Well, 48 hours, Your Honor. Can we
25 have 48 hours?

1 JUDGE CHACHKIN: Yes. 48 hours, make a conference
2 call, I'll make a ruling.

3 MR. DAVIS: 48 hours.

4 MR. HORTON: That will be acceptable, Your Honor.

5 MR. DAVIS: That's acceptable, Your Honor.

6 MR. HORTON: Your Honor, frankly, it was the other
7 one that concerns me more. Which is the ability to advise
8 my client. Now, again, I understand that there is the
9 unusual case involving something like the formula for Coke.
10 But if I get something which in my mind materially says to
11 me I have to tell my client, "Look, your chances just went
12 up, your chances just went down."

13 I don't want to have to go back to my client and
14 say, "Trust me. I can't tell you why, but I'm telling you
15 your chances of winning this case are now better or worse
16 than I once thought they were. And if you're interested in
17 a settlement, for example, just trust me. You can't make
18 your own evaluation, but I'm here to tell you hold out for
19 more, or don't hold out for so much."

20 The reason why we put inside counsel -- the
21 typical order that I've been involved with where these
22 concerns are, is that you will designate no more than two
23 people at each client. And they can be whoever they may be,
24 and they will exclude one or a particularly sensitive class
25 of people. I went with inside counsel here, reluctantly.

1 Because the inside counsel here, while a very capable
2 person, is not the principal of the company.

3 The company is run largely by two individuals.

4 And I am frankly uncomfortable with the notion that I and
5 the inside counsel will jointly be in the position of having
6 to tell them, "We can't tell you why, but there's some
7 reason." But at least I was willing to compromise, to the
8 extent of saying at least someone at the client that has a
9 long working relationship with these people, will be able to
10 be privy, to understand why and how I'm assessing the case.
11 And also to help me understand the importance of evidence.

12 I may see stuff in discovery that will be lost on
13 me as a litigator who has some background in the area, but
14 less than people who do it every day.

15 MR. DAVIS: Your Honor?

16 MR. HORTON: And to limit it to inside counsel,
17 who after all, could have brought the case herself. There's
18 not requirement that I'm aware of in the Commission's rules
19 that outside counsel be retained. But it seems to me, going
20 pretty far down the road altogether, and I'm quite surprised
21 to --

22 JUDGE CHACHKIN: Well, you know, this also may be
23 moot. The only area that I can see that this could be a
24 problem, maybe in price, possibly. But I --

25 MR. DAVIS: Price is the big one at American

1 Sports Classics. Those are the two basic --

2 JUDGE CHACHKIN: Those are the only two areas I
3 could see could even be a problem. Now, the question is
4 whether you need, after looking at the document, and the
5 document -- whether it would be necessary for you to
6 actually show the document to General Counsel, or a party.
7 Depends on the nature of the document. But it would seem to
8 me -- well, I don't know at this point.

9 It's hard for me to imagine that we're going to
10 have a situation which would be necessary for you to show
11 this particular document to a principal or General Counsel.
12 I don't know.

13 MR. HORTON: Again, I --

14 JUDGE CHACHKIN: I don't know.

15 MR. DAVIS: But the problem here, Your Honor,
16 we're speculating about things that are completely taken
17 care of in our protective order. So for example, if there's
18 a document that they see and it is marked such that they
19 can't give it to in-house counsel, if they think it's
20 important for rendering advice, they can come back and ask
21 us, and we can change the designation. Or they can come to
22 Your Honor. There's no problem with that.

23 Of course, if it is something sensitive, we've
24 already discussed some areas -- pricing, or the competing
25 sports service that we're developing. Obviously we don't